

SENATE BILL No. 491

DIGEST OF INTRODUCED BILL

Citations Affected: IC 13-11-2; IC 13-14-9-3; IC 13-18.

Synopsis: Wetlands. Establishes: (1) a program for the issuance of permits for the discharge of fill material into certain wetlands; and (2) a wetlands mitigation bank program.

Effective: Upon passage.

Gard

January 23, 2003, read first time and referred to Committee on Environmental Affairs.

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First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

SENATE BILL No. 491

A BILL FOR AN ACT to amend the Indiana Code concerning environmental law.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 13-11-2-16.5 IS ADDED TO THE INDIANA
2 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
3 [EFFECTIVE UPON PASSAGE]: **Sec. 16.5. "Bank", for purposes of**
4 **IC 13-18, means the Indiana wetlands mitigation bank established**
5 **under IC 13-18-23-2.**

6 SECTION 2. IC 13-11-2-25.8 IS ADDED TO THE INDIANA
7 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
8 [EFFECTIVE UPON PASSAGE]: **Sec. 25.8. "Class I wetland", for**
9 **purposes of IC 13-18, means an isolated wetland located in a**
10 **setting that has been substantially disturbed or affected by human**
11 **activity or development such that at least thirty percent (30%) of**
12 **the total area comprising the wetland and a buffer zone extending**
13 **two hundred (200) feet from the outer edge of the delineated**
14 **wetland has been affected by one (1) or more of the following:**

15 **(1) Removal or replacement of the natural vegetation.**
16 **(2) Disturbance or modification of the natural hydrology.**
17 SECTION 3. IC 13-11-2-25.9 IS ADDED TO THE INDIANA



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CODE AS A NEW SECTION TO READ AS FOLLOWS
[EFFECTIVE UPON PASSAGE]: **Sec. 25.9. "Class III wetland", for purposes of IC 13-18, means an isolated wetland that:**

(1) is located in a setting undisturbed by human activity or development; and

(2) is of one (1) of the following rare and ecologically important types:

(A) Acid bog.

(B) Acid seep.

(C) Circumneutral bog.

(D) Circumneutral seep.

(E) Fen.

(F) Forested fen.

(G) Forested swamp.

(H) Marl beach.

(I) Muck flat.

(J) Panne.

(K) Sand flat.

(L) Sedge meadow.

(M) Shrub swamp.

(N) Sinkhole pond.

(O) Sinkhole swamp.

(P) Wet floodplain forest.

(Q) Wet prairie.

(R) Wet sand prairie.

SECTION 4. IC 13-11-2-27.3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 27.3. "Class II wetland", for purposes of IC 13-18, means an isolated wetland located in a setting that has been disturbed or affected by human activity or development such that less than thirty percent (30%) of the total area comprising the wetland and a buffer zone extending two hundred (200) feet from the outer edge of the delineated wetland has been affected by one (1) or more of the following:**

(1) Removal or replacement of the natural vegetation.

(2) Disturbance or modification of the natural hydrology.

SECTION 5. IC 13-11-2-29 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 29. "Clean Water Act", for purposes of this chapter, IC 13-18-13, IC 13-18-22, and IC 13-18-24, refers to:**

(1) 33 U.S.C. 1251 et seq.; and

(2) regulations adopted under 33 U.S.C. 1251 et seq.



SECTION 6. IC 13-11-2-36.3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 36.3. "Compensatory mitigation", for purposes of IC 13-18-22 and IC 13-18-23, means the:**

- (1) restoration;
- (2) creation;
- (3) enlargement; or
- (4) enhancement;

of wetlands to offset or compensate for a loss of wetlands resulting from an authorized discharge of fill materials.

SECTION 7. IC 13-11-2-48.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 48.5. "CWA wetland", for purposes of IC 13-18, is a wetland that is navigable waters under Section 404(a) of the Clean Water Act.**

SECTION 8. IC 13-11-2-74.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 74.5. (a) "Exempt wetland", for purposes of IC 13-18, means an isolated wetland that:**

- (1) is a volitional wetland unless:
 - (A) the wetland is approved by the department for compensatory mitigation purposes in accordance with a permit issued under:
 - (i) IC 13-18-22; or
 - (ii) Section 404 of the Clean Water Act;
 - (B) the wetland is reclassified as a state regulated wetland under IC 13-18-23-5;
 - (C) the owner of the wetland declares, by a written instrument:
 - (i) recorded in the office of the recorder of the county or counties in which the wetland is located; and
 - (ii) filed with the department;
- that the wetland is to be considered in all respects to be a state regulated wetland;
- (2) exists as a spontaneous feature in or on:
 - (A) a residential lawn;
 - (B) a lawn or landscaped area of a commercial or governmental complex;
 - (C) agricultural land;
 - (D) a roadside ditch;
 - (E) an irrigation ditch;



- (F) a manmade drainage control structure; or
- (G) a similar area;
- (3) is a fringe wetland associated with a private pond;
- (4) is, or is associated with, a manmade body of surface water of any size created by:
 - (A) excavating;
 - (B) diking; or
 - (C) excavating and diking;
- dry land to collect and retain water for or incidental to agricultural, commercial, industrial, or aesthetic purposes;
- (5) is a Class I wetland with a delineated area of one (1) acre or less;
- (6) is a Class II wetland with a delineated area of one-quarter (1/4) acre or less;
- (7) is located on farmland subject to regulation by the National Resources Conservation Service of the United States Department of Agriculture; or
- (8) is constructed for reduction or control of pollution.

(b) The acreage criteria in subsection (a)(5) and (a)(6):

- (1) apply to the area of an individual wetland; and
- (2) do not apply to a total area of more than one (1) wetland located on a tract of property.

SECTION 9. IC 13-11-2-107.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 107.5. "Indiana wetlands mitigation bank"**, for purposes of IC 13-18-23, means the administrative program established by IC 13-18-23-2 in which wetlands are registered to generate wetland mitigation credits.

SECTION 10. IC 13-11-2-112.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 112.5. "Isolated wetland"**, for purposes of IC 13-18, is a wetland that is not navigable waters under Section 404(a) of the Clean Water Act.

SECTION 11. IC 13-11-2-166.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 166.5. "Pond"**, for purposes of IC 13-18:

(1) means:

- (A) a natural or manmade body of surface water that is smaller than a lake subject to IC 14-26-5; or
- (B) a manmade body of surface water of any size created by:

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(i) excavating;

(ii) diking; or

(iii) excavating and diking;

dry land to collect and retain water for or incidental to agricultural, commercial, industrial, or aesthetic purposes; and

(2) includes water in saturated soils associated with the body of water.

SECTION 12. IC 13-11-2-221.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 221.5. "State regulated wetland", for purposes of IC 13-18, means an isolated wetland located in Indiana that is not an exempt wetland.**

SECTION 13. IC 13-11-2-245.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 245.5. "Volitional wetland", for purposes of IC 13-18, means an isolated wetland that:**

(1) is located on:

(A) privately owned land; or

(B) publicly owned land;

(2) was restored, created, or expanded in the absence of a governmental order, directive, or regulatory requirement concerning the restoration, creation, or enlargement of the wetland; and

(3) has not been applied for or used as compensatory mitigation or another regulatory purpose that would have the effect of subjecting the wetland to regulation as waters by:

(A) the department; or

(B) another governmental entity.

SECTION 14. IC 13-11-2-265, AS AMENDED BY P.L.183-2002, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE] : **Sec. 265. (a) "Waters", for purposes of water pollution control laws and environmental management laws, means:**

(1) the accumulations of water, surface and underground, natural and artificial, public and private; or

(2) a part of the accumulations of water;

that are wholly or partially within, flow through, or border upon Indiana.

(b) The term "waters" does not include:

(1) an exempt wetland;

(2) a private pond; or

(3) an off-stream pond, reservoir, **wetland**, or **other** facility built

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for reduction or control of pollution or cooling of water before discharge. ~~unless the discharge from the pond, reservoir, or facility causes or threatens to cause water pollution.~~

SECTION 15. IC 13-11-2-265.6 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 265.6. "Wetlands", for purposes of IC 13-18, means areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include:**

- (1) swamps;**
- (2) marshes;**
- (3) bogs; and**
- (4) similar areas.**

SECTION 16. IC 13-11-2-265.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 265.7. "Wetlands delineation", for purposes of IC 13-18, means a technical assessment of whether a wetland exists on an area of land, and, if so, of what type and quality, based on the presence or absence of wetlands characteristics, as determined consistent with the Wetlands Delineation Manual, Technical Report Y-87-1 of the United States Army Corps of Engineers.**

SECTION 17. IC 13-11-2-265.8 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 265.8. "Wetlands mitigation credit", for purposes of IC 13-18, means a credit measured in units of acres representing an area of wetlands that has been restored, created, enlarged, or enhanced for compensatory mitigation purposes. A credit may be acquired through:**

- (1) the restoration, creation, enlargement, or enhancement of a wetland intended to mitigate a specific project involving a permitted loss of wetlands; or**
- (2) purchase of the credit from the owner of a wetland registered in:**
 - (A) the Indiana wetlands mitigation bank; or**
 - (B) another wetlands mitigation bank accepted by the department for wetlands mitigation.**

SECTION 18. IC 13-14-9-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 3. (a) Except as provided in subsection (b), the department shall provide notice in the**

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Indiana Register of the first public comment period required by section 2 of this chapter. A notice provided under this section must do the following:

- (1) Identify the authority under which the proposed rule is to be adopted.
- (2) Describe the subject matter and the basic purpose of the proposed rule. The description required by this subdivision must include a listing of all alternatives being considered by the department at the time of the notice and must set forth the basis for each alternative.
- (3) Describe the relevant statutory or regulatory requirements or restrictions relating to the subject matter of the proposed rule that exist before the adoption of the proposed rule.
- (4) Request the submission of alternative ways to achieve the purpose of the proposed rule.
- (5) Request the submission of comments, including suggestions of specific language for the proposed rule.
- (6) Include a detailed statement of the issue to be addressed by adoption of the proposed rule.

(b) This section does not apply to rules adopted under IC 13-18-22-3.

SECTION 19. IC 13-18-22 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

Chapter 22. State Regulated Wetlands

Sec. 1. (a) Except as provided in subsection (b), a person proposing a discharge of fill material into a state regulated wetland must obtain a permit under this chapter to authorize the discharge.

(b) A permit is not required under this chapter for a discharge into a state regulated wetland of:

- (1) dirt, sand, rock, stone, concrete, or other inert fill materials in a de minimis amount;**
- (2) fill material resulting from any activity for which a department or agency of this state other than the department has approved, under authority other than this chapter, a plan to:**
 - (A) minimize, to the extent practical using best technology currently available, disturbances and adverse effects on fish and wildlife;**
 - (B) otherwise effectuate environmental values; and**
 - (C) enhance those values where practicable; or**
- (3) fill material resulting from any activity of a type or nature**



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that would be exempt from permits or other regulatory requirements under Section 404(f) of the Clean Water Act if the wetland affected by the fill material were a CWA wetland instead of a state regulated wetland.

Sec. 2. (a) A site specific permit may be required to authorize the discharge of fill material into a Class II or Class III wetland.

(b) The board shall establish:

(1) a general permit by rule for the authorization of certain routine activities with minimal impact in or affecting Class II wetlands, such as:

(A) utility crossings;

(B) maintenance activities; and

(C) other activities analogous to those addressed by nationwide permits 3-8, 12-16, 18-21, 25, 27, 29-31, 33, 38-40, and 42-44 (as published in 67 Fed.Reg. 2077-2089 (2002)); and

(2) a general permit by rule to govern the discharge of fill material into Class I wetlands.

Sec. 3. The board shall adopt rules under IC 4-22-2 and IC 13-14:

(1) not later than June 1, 2004, to govern the issuance of individual permits by the department under section 2(a) of this chapter; and

(2) not later than February 1, 2004, to establish the general permits by rule described in section 2 of this chapter, which must be self-implementing to the maximum extent feasible.

Sec. 4. (a) The rules adopted under section 3 of this chapter:

(1) must require that the applicant for a permit under section 2(a) of this chapter demonstrate, as a prerequisite to the issuance of the permit, that the discharge of fill material into:

(A) a Class II wetland is reasonably necessary or appropriate to achieve a legitimate use proposed by the applicant on the property on which the wetland is located; and

(B) a Class III wetland is without practical alternative and will be accompanied by taking steps that are practicable and appropriate to minimize potential adverse impacts of the discharge on the aquatic ecosystem of the wetland;

(2) must require, as a prerequisite to the applicability of the general permit by rule under section 2 of this chapter to a specific proposed discharge, that the person proposing the discharge submit to the department a notice of intent to be

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covered by the permit by rule that:

(A) identifies the Class I wetlands to be filled; and

(B) provides a mitigation plan to compensate for the described activity;

(3) except as provided in subsection (c), must establish, as a general condition of permits issued under this chapter and of the general permit by rule, that compensatory mitigation will be provided to reasonably offset the loss of wetlands allowed by the permits with an overall goal for the permit program of no net loss of state regulated wetlands; and

(4) may prescribe additional conditions to permits to fill Class II wetlands or Class III wetlands issued under this chapter that are reasonable and necessary to carry out the purposes of this chapter.

(b) For purposes of subsection (a)(1)(A):

(1) a resolution of the executive of the county or municipality in which the wetland is located; or

(2) a permit or other approval from a local government entity having authority over the proposed use of the property on which the wetland is located;

that includes a specific finding that the filling of the wetland is reasonably necessary or appropriate to achieve the intended use of the property is considered conclusive evidence of that fact.

(c) Rules under subsection (a)(3) may provide for exceptions to compensatory mitigation in specific, limited circumstances.

Sec. 5. (a) The department shall:

(1) administer the permit program established by this chapter; and

(2) review and issue decisions on applications for permits to fill state regulated wetlands in accordance with the rules issued by the board under section 3 of this chapter.

(b) Before the adoption of rules by the board under section 3 of this chapter, the department shall:

(1) issue permits under this chapter consistent with the general purpose of this chapter; and

(2) for discharges of fill material to Class I wetlands, issue permits under this subsection:

(A) that are simple, streamlined, and uniform;

(B) that do not require development of site specific provisions; and

(C) promptly upon submission by the applicant to the department of a notice of registration for a permit.

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1 (c) Not later than June 1, 2003, the department shall make
2 available to the public:

3 (1) a form for use in applying for a permit under section 2(a)
4 of this chapter; and

5 (2) a form for use in submitting a notice of registration for a
6 permit to fill a Class I wetland under subsection (b).

7 Sec. 6. (a) The department shall make a decision on an
8 application for a permit under section 2(a) of this chapter not later
9 than one hundred twenty (120) days after receipt of the
10 application. If the department fails to issue a decision on a permit
11 application by that deadline, a permit is considered to have been
12 issued by the department in accordance with the application.

13 (b) Except as provided in subsection (c), a permit to fill a Class
14 I wetland is considered to have been issued on the thirty-first day
15 after the department receives a notice of registration submitted
16 under section 5(b)(2) of this chapter if a permit has not been issued
17 by the department.

18 (c) The department may deny a registration for a permit under
19 subsection (b) before the period specified in subsection (b) expires.

20 (d) The department must support a denial under subsection (a)
21 or (c) by a written statement of reasons.

22 Sec. 7. (a) The owner of a Class III wetland may petition the
23 board for designation of the wetland as an outstanding state
24 protected wetland. Upon verification by the board that the wetland
25 is a Class III wetland and that the petitioner is the owner of the
26 wetland, the board shall conduct a proceeding under IC 4-22-2 to
27 adopt a rule designating the wetland as an outstanding state
28 protected wetland.

29 (b) A rule adopted by the board under subsection (a) must
30 specifically identify each wetland to be designated as an
31 outstanding state protected wetland, including:

32 (1) the wetland type;

33 (2) a legal description of the wetland as delineated; and

34 (3) other information considered necessary by the board.

35 (c) The owner of a Class III wetland designated as an
36 outstanding state protected wetland under this section shall:

37 (1) not cause or allow any anthropogenic activities on the
38 property on which the wetland is located that may adversely
39 affect or degrade the wetland, except for activities with
40 minimal and short term effect, such as construction of an
41 observation pathway or installation of an underground
42 pipeline that are:

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- 1 (A) authorized by rules adopted by the board; or
 2 (B) approved by the department in the absence of rules
 3 under clause (A); and
 4 (2) provide for the long term assurance of the protections
 5 described in subdivision (1) through:
 6 (A) a restrictive covenant that is recorded with respect to
 7 the property on which the delineated wetland is located; or
 8 (B) a grant of title to or a conservation easement in the
 9 property on which the delineated wetland is located to:
 10 (i) the department of natural resources; or
 11 (ii) a nonprofit entity with demonstrated ability in the
 12 maintenance and protection of wetlands.
 13 (d) Notwithstanding the designation of a wetland under this
 14 section by the board as an outstanding state protected wetland, the
 15 owner of a Class III wetland may petition the board for rescission
 16 of the designation if the owner can demonstrate important social
 17 or economic needs that warrant adverse effects to the wetland. In
 18 its review of the petition, the board shall give great weight to a
 19 resolution of the legislative body of the municipality or county in
 20 which the Class III wetland is located describing important social
 21 or economic needs, the accomplishment of which would necessitate
 22 adverse effects to the wetland.
 23 **Sec. 8. The department has no authority over the:**
 24 (1) filling;
 25 (2) draining; or
 26 (3) elimination by other means;
 27 before January 1, 2003, of a wetland that would have been an
 28 isolated wetland.
 29 SECTION 20. IC 13-18-23 IS ADDED TO THE INDIANA CODE
 30 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
 31 UPON PASSAGE]:
 32 **Chapter 23. Indiana Wetlands Mitigation Bank Program**
 33 **Sec. 1. "Bank", for purposes of this chapter, means the Indiana**
 34 **wetlands mitigation bank.**
 35 **Sec. 2. The bank program is established to promote the**
 36 **restoration, creation, or enlargement of wetlands that may be used**
 37 **as mitigation credits to offset losses of regulated wetlands**
 38 **occurring as a result of development projects.**
 39 **Sec. 3. (a) Mitigation credits acquired from owners of wetlands**
 40 **registered in the bank under this chapter may be used to provide**
 41 **compensatory mitigation for projects at any location in Indiana**
 42 **involving a discharge of fill materials into:**

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- (1) a state regulated wetland; or
- (2) if the mitigation credits meet applicable eligibility criteria under federal law, a CWA wetland.

(b) The application of mitigation credits acquired under this chapter to compensatory mitigation needs associated with a project involving the discharge of fill materials into a state regulated wetland must be consistent with the following:

- (1) The mitigation credits may be applied regardless of the relative locations of the wetland in the bank on which the credits are based and the state regulated wetland to be filled.
- (2) The ratio of mitigation credits to the acreage of state regulated wetland to be filled must be:
 - (A) one to one (1:1) if the mitigation credits are based on a wetland of the same general type as the state regulated wetland to be filled;
 - (B) three to one (3:1) if the state regulated wetland being filled is a Class III wetland; or
 - (C) one and one-half to one (1.5:1) in all other cases.

(c) For purposes of subsection (b)(2), the general wetland types are:

- (1) open water/emergent wetlands;
- (2) scrub/shrub wetlands;
- (3) forested wetlands; and
- (4) the Class III wetlands types under IC 13-11-2-25.9(2).

(d) Any additional conditions determined by the board in rules adopted under subsection (f) must be reasonable and necessary consistent with this chapter.

(e) The department shall administer the bank program in accordance with this chapter.

(f) The board shall adopt procedural rules under IC 4-22-2 and IC 13-14 not later than December 1, 2004, to facilitate:

- (1) the administration of the bank; and
- (2) transactions involving mitigation credits for wetlands registered with the bank;

consistent with this chapter. Implementation of this chapter may not be delayed while rules are being developed by the board under this subsection.

Sec. 4. (a) A wetlands must be registered with the bank before mitigation credits based on the wetlands may be sold for use under this chapter. Wetlands that may be registered with the bank include:

- (1) volitional wetlands existing before the effective date of this



chapter; and

(2) volitional wetlands restored, created, or enlarged after the effective date of this chapter.

(b) To register a wetland with the bank, the owner of the wetland must submit a registration form to the department that:

(1) identifies the voluntary wetland by location and acreage;

(2) provides the name and address of the owner;

(3) states when the restoration, creation, or enlargement of the wetland began;

(4) represents that the wetland is not:

(A) a state regulated wetland; or

(B) a CWA wetland;

(5) includes a wetlands delineation report that describes:

(A) the type of the wetland;

(B) the quality of the wetland, taking into consideration its age, type, and hydrogeologic setting; and

(C) the expected stability of the wetland; and

(6) includes a one (1) time registration fee in the amount of the lesser of:

(i) ten dollars (\$10) per acre; or

(ii) one hundred dollars (\$100) per wetland.

(c) The department shall provide a form for registration of wetlands with the bank.

(d) The department may refuse to register a wetland proposed for the bank if:

(1) the quality of the wetland is not reasonably consistent with its age, type, and hydrogeologic setting; or

(2) the wetland's features and quality are not stable.

(e) The department shall:

(1) give written notice of its refusal to register a wetland in the bank to the person that submitted the registration form for the wetland not later than ninety (90) days after the department's receipt of the registration form; and

(2) support its refusal with a statement of reasons.

If notification of a refusal to register a wetland is not provided as described in this subsection, a wetland for which a registration form is submitted to the department in accordance with this section is considered to be registered in the bank.

(f) A property owner may notify the department of intent to register a wetland with the bank before restoration, creation, or enlargement of the wetland.

(g) The owner of a wetland that has been registered with the

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1 bank may cancel the registration and withdraw the wetland from
 2 the bank at any time before mitigation credits are sold under this
 3 chapter on the basis of the registered wetland.

4 **Sec. 5. (a)** A person may acquire wetlands mitigation credits to
 5 satisfy compensatory mitigation needs by the purchase of credits
 6 at market price from an owner of wetlands acreage registered in
 7 the bank. The mitigation credits may be used to provide
 8 compensatory mitigation for projects involving a discharge of fill
 9 materials into:

- 10 (1) a state regulated wetland; or
- 11 (2) if the credits satisfy federal criteria for mitigation banks,
 12 a CWA wetland.

13 **One (1) unit of credit corresponds to one (1) acre of registered**
 14 **wetlands. Fractional credits may be purchased.**

15 **(b)** A person that purchases wetlands mitigation credits under
 16 this section shall do the following:

- 17 (1) Not later than five (5) days after the date of purchase, give
 18 the department a notice of the purchase in writing that
 19 includes the following:

- 20 (A) The name and address of the purchaser.
- 21 (B) The name and address of the seller.
- 22 (C) The amount of credits purchased.
- 23 (D) The registration number and location of the registered
 24 wetland corresponding to the credits purchased.
- 25 (E) The purchase price.

- 26 (2) Pay a fee of twenty-five dollars (\$25) to the department
 27 with respect to each sale of credits of any amount based on a
 28 wetland registered with the bank.

29 **(c)** A registered wetland that is the basis of a sale of mitigation
 30 credits under subsection (a) is reclassified as a state regulated
 31 wetland when the credits sold correspond to the entire acreage of
 32 the registered wetland.

33 **(d)** If the sale of credits involves less than the total acreage of
 34 the registered wetland:

- 35 (1) the fraction of the acreage of the registered wetland not
 36 committed to a sale of credits remains available for future
 37 sale of mitigation credits; and
- 38 (2) the wetland is reclassified as a transitional registered
 39 wetland.

40 **(e)** A transitional registered wetland is reclassified as a state
 41 regulated wetland when the cumulative credits sold with respect to
 42 the transitional registered wetland correspond to the entire

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acreage of the wetland.

(f) No action by the department is required to effectuate the reclassification of a wetland under this section.

(g) A wetland may not remain in transitional registered wetland status for more than ten (10) years. A transitional registered wetland is reclassified as a state regulated wetland at the end of the ten (10) year period beginning on the date of the initial sale of credits based on the wetland if the full number of potential mitigation credits corresponding to the transitional registered wetland is not sold by the end of that period. If a wetland has been reclassified as a state regulated wetland under this subsection, the owner of the wetland property may continue to sell the credits corresponding to the wetland that remain unsold at the time of the reclassification.

(h) A person that has purchased mitigation credits under this section but has not applied the credits to compensatory mitigation requirements for a wetlands development project may resell some or all of the credits to another person. If the owner of a registered wetland redeems mitigation credits previously sold to another person by repurchasing the credits, the amount of redeemed credits are restored to the remaining credit balance in the bank pertaining to the registered wetland.

(i) Each owner of a registered wetland shall provide to the department not later than March 1 of each year a summary of transactions involving credits in the registered wetland that occurred during the preceding calendar year.

(j) The department shall maintain records on each wetland registered in the bank that include:

- (1) the acreage and location of the wetland;
- (2) the cumulative number of mitigation credits sold on the basis of the registered wetland;
- (3) the remaining balance of credits available for sale attributable to the registered wetland;
- (4) the date of each sale of mitigation credits and the number of credits sold; and
- (5) the name and address of the current owner of each mitigation credit sold on the basis of the registered wetland.

SECTION 21. IC 13-18-24 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

Chapter 24. Department Action on Certification Applications
Sec. 1. (a) The department shall:



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(1) make a final determination on an application for a certification under Section 401 of the Clean Water Act not later than one hundred twenty (120) days after its receipt of a complete application; and

(2) include in its notice of the final determination to the applicant a statement of reasons for the final determination.

(b) A failure by the department to act within the period specified in subsection (a)(1) constitutes a waiver of the certification.

SECTION 22. [EFFECTIVE UPON PASSAGE] (a) The environmental quality service council shall do the following:

(1) Monitor the implementation of this act.

(2) Review the role of the department of environmental management with respect to action on requests under Section 401 of the Clean Water Act (33 U.S.C 1341) for certifications concerning projects subject to permit requirements under Section 404 of the Clean Water Act (33 U.S.C. 1344), and recommend whether statutory direction is appropriate or necessary in defining that role.

(3) Complete its consideration of the options for statutory definition of "private pond" as used in the definition of "waters" in IC 13-11-2-265, as amended by this act, and:

(A) recommend an option; and

(B) include with the recommendation a statement of rationale for the recommendation.

(4) Evaluate the tensions between existing programs for wetlands protection and for local drainage and recommend principles and policies for ameliorating those tensions, taking into consideration the rationale and objectives for both programs.

(5) Submit its final report on the matters described in subdivisions (1) through (4) before November 1, 2003, to:

(A) the governor; and

(B) the executive director of the legislative services agency.

(b) The environmental quality service council shall:

(1) conduct an ongoing evaluation of the implementation of:

(A) the permit program for state regulated wetlands under IC 13-18-22, as added by this act; and

(B) the Indiana wetlands mitigation bank program under IC 13-18-23, as added by this act.

(2) recommend any adjustments to either program referred to in subdivision (1) that are considered advisable to improve

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1 the operation and effectiveness of the programs, consistent
2 with the purpose of providing an efficient permitting process
3 and enhancing the attainment of an overall goal of no net loss
4 of state regulated wetlands; and

5 (3) submit its final report on the matters described in
6 subdivisions (1) and (2) before November 1, 2005, to:

7 (A) the governor; and

8 (B) the executive director of the legislative services agency.

9 (c) This SECTION expires January 1, 2006.

10 SECTION 23. An emergency is declared for this act.

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